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Nos. 80-1832, 80-2170, and 80-2171

In the Supreme Court of the United States

OCTOBER TERM, 1982

IMMIGRATION AND NATURALIZATION SERVICE, APPELLANT

v.

JAGDISH RAI CHADHA, ET AL.

UNITED STATES HOUSE OF REPRESENTATIVES, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

UNITED STATES SENATE, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN NO. 80-1832 AND ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN NOS. 80-2170 AND 80-2171

MOTION FOR LEAVE TO FILE THIRD SUPPLEMENTAL BRIEF AND THIRD SUPPLEMENTAL BRIEF FOR THE IMMIGRATION AND NATURALIZATION SERVICE

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MOTION FOR LEAVE TO FILE THIRD SUPPLEMENTAL BRIEF FOR THE IMMIGRATION AND NATURALIZATION SERVICE

Pursuant to Rule 35.5 of the Rules of this Court, the Solicitor General, on behalf of appellant-respondent Immigration and Naturalization Service, respectfully moves for leave to file the attached Supplemental Brief to bring to the Court's attention the decision of the United States Court of Appeals for the District of Columbia Circuit in *American Federation of Government Employees* v. *Samuel R. Pierce, Secretary of Department of Housing and Urban Development*, No. 82-2372 (Dec. 8, 1982). In its opinion in that case, the court of appeals held unconstitutional a provision in the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1983, Pub. L. No. 97-272, 96 Stat. 1160, 1164, that bars the use of appropriated funds for reorganization purposes without the prior approval of the Committees on Appropriations of the United States Senate and House of Representatives. The constitutional question decided by the court of appeals is related to the question of the constitutionality of the legislative veto provision in Section 244(c) of the Immigration and Nationality Act, 8 U.S.C. 1254(c), at issue in these consolidated cases.

Respectfully submitted.

REX E. LEE
Solicitor General

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THIRD SUPPLEMENTAL BRIEF FOR THE IMMIGRATION AND NATURALIZATION SERVICE

The Solicitor General, on behalf of appellant-respondent Immigration and Naturalization Service, submits this Supplemental Brief pursuant to Rule 35.5 of the Rules of this Court to bring to the Court's attention the decision of the United States Court of Appeals for the District of Columbia Circuit in *American Federation of Government Employees* v. *Samuel R. Pierce, Secretary of Department of Housing and Urban Development*, No. 82-2372 (Dec. 8, 1982). In that case, the court of appeals held unconstitutional a provision in the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1983, Pub. L. No. 97-272, 96 Stat. 1160, 1164, that bars the use of appropriated funds, prior to January 1, 1983, to plan, design, implement, or administer any reorganization of the Department of Housing and Urban Development without the prior approval of the Committees on Appropriations of the United States Senate and House of Representatives.

In so ruling, the court of appeals relied on its previous decision in *Consumer Energy Council of America* v. *FERC*, 673 F.2d 425 (D.C. Cir. 1982), appeals and petitions for cert. pending, Nos. 81-2008, 81-2020, 81-2151, 81-2171, 82-177 and 82-209, which was adopted by the en banc court of appeals in *Consumers Union of the United States, Inc.* v. *FTC*, 691 F.2d 575 (D.C. Cir. 1982), appeal docketed, No. 82-935 (Dec. 6, 1982). The court reasoned that if the provision is viewed as giving either Appropriations Committee the authority to veto the use of appropriated funds for the specified purpose, it (i) violates the requirements in Article I, Section 7 of the Con-

stitution by permitting law to be made without a vote of both Houses of Congress and by circumventing the President's veto power, and (ii) violates the principle of separation of powers. Alternatively, the court reasoned that if the provision is viewed as granting to the two Appropriations Committees the power to lift a congressionally imposed restriction on the use of appropriated funds, the provision grants legislative power to congressional committees and is unconstitutional because it does not provide for the concurrence of the two Houses and presentation to the President. See slip op. 6-8. The court then concluded, after a review of the legislative history, that the veto provision is not severable from the remainder of the statutory restriction (*id.* at 8-11).

The constitutional questions decided by the court of appeals are closely related to those presented in the instant consolidated cases, and we therefore bring the court of appeals' decision to the attention of the Court. For the convenience of the Court, we have lodged 10 copies of the opinion with the Clerk of the Court.

Respectfully submitted.

REX E. LEE
Solicitor General

DECEMBER 1982

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